SB CIVIL MISC. APPEAL NO. 758/1995
(SHRAVAN SINGH v SHRI SAGAR & ORS.)

HON'BLE MR. JUSTICE R.S. CHAUHAN

DATE OF ORDER: 22.8.06.

Mr. Shobhit Tiwari alongwith
Mr. K.N. Tiwari for the appellant.
Mr. Tripurari Sharma for the respondent No.3.
Mr. Pritam Bijlani for respondent No.6.

The appellant-claimant has challenged the award dated 10.4.95 passed by the Motor Accident Claims Tribunal, Jaipur District, Jaipur, whereby for the amputation of the right arm, the claimant has been awarded a compensation of only Rs. 86,000/- alongwith 12% interest.

In brief the facts of the case are that on 30.8.97 the appellant was going to his village on truck, bearing registration No,. RNJ 225. Around 5.30 p.m., while the truck was near the village Dambi, another truck, bearing registration No. RNJ 1568, which was coming from Dudu towards Jaipur collided with the truck in which the appellant was travelling. Consequently, the appellant's right arm was amputed. According to the disability certificate, he has suffered a disability of 75%. The appellant filed a claim petition and vide award dated 10.4.85, the learned Tribunal granted a compensation as

aforementioned. Hence this appeal for enhancement of compensation before this Court.

Mr. Shobhit Tiwari, the learned counsel for the appellant, has contended that according to the disability certificate issued by the Medical Board, the appellant has suffered a disability of 75%. Dr. M.K. Mathur, AD-3, has also testified that the appellant has suffered 75% of disability. Moreover, initially the appellant was hospitalised for 15 days. After two months, he was again hospitalised when a steel plate had to be inserted and bone from the hip bone had to be extracted and grafted for which the appellant had to undergo dressing for 6-7 months. Even after this operation, the appellant had to undergo another operation. Thus the appellant had spent 35,000/- on medicine and on nutritional food. He also had to suffer both mental and physical pain and agony for which he has hardly been compensated. Furthermore, although the appellant was earning Rs. 60-70 per day as a 'Mistry', his income has been assessed as only Rs. 25,000/- per annum and has taken the loss of income only as Rs. 6,000/-. In fact, since there is disablement of 75%, the loss of income should be calculated as 75% of Rs. 25,000/-. Moreover, the learned Tribunal has erred in taking a multiplier of 10. Since the appellant

was 30 years old, a multiplier of 18 should have been applied. In order to buttress his case, the appellant has relied on the case of R.D. Hattangadi Vs. Pest Control ((India) Pvt. Ltd. (1995 ACJ 366 (SC)), and on the case of Dr. Gop Ramchandani Vs. Onkar Singh, (1993 ACJ 577 (Raj.), wherein this Court had awarded a compensation of Rs. 3 lacs for a 50% permanent disability. He has also relied on the case of United India Insurance Co. Ltd. vs. Sirajuddin & Ors. (1995 ACJ 895 (Raj.), wherein in a case of 50% permanent disability this Court had reduced the award from Rs. 3,78,000/- to Rs. 3,05,600/-. Hence according to the learned counsel, at least Rs. 3 lacs ;have been paid as compensation for 50% permanent disability case. According to him, the present case is a case of 75% permanent disability, therefore, the appellant is entitled to at least Rs. 4 lacs.

On the other hand, Mr. T.P. Sharma, the learned counsel for respondent No. 3, has argued that under the Motor Vehicle Act, 1988 (henceforth to be referred as 'the Act') the Tribunal is supposed to pay a “reasonable amount” to the claimant. He has further argued that the conditions of policy has been violated, therefore, the Insurance Company is not liable to pay the compensation. Moreover,

the appellant has not submitted any proof of his income, therefore, the income assessed by the Tribunal was reasonably done. Similarly, Mr. Pritam Bijlani, learned counsel for the respondent No.6, has argued that since both the trucks had a head on collision, therefore, it is a case of contributory negligence. He has also raised the contention that there was no proof of income of the appellant. According to both the learned counsels the award is most reasonable.

We have heard the learned counsels for the parties and have perused the impugned award.

The learned Tribunal had considered the issue of contributory negligence. The learned Tribunal has clearly held that the negligence has occurred on the part of the truck No. RNJ 1568, he truck on which the appellant was not travelling. The learned counsels for the Insurance Company have not been able to show any reason for doubting the judicial finding on this point. Their only contention is that in case of head on collision between two vehicles, the court shall presume contributory negligence. However, such a universal principle of presumption cannot be laid down as each case

has to be tested on the peculiar facts and circumstances of that case. Therefore, in the absence of any cogent evidence this Court cannot presume contributory negligence merely on the ground that there was a head on collision between the two trucks. Hence, the contention with regard to the contributory negligence is meritless.

A person, who is working as a 'Mistry', a skilled labourer, cannot be expected to keep any document with regard to his income. In the construction industry, such workers are not given any pay-slips by the employer. Therefore, to expect that a person would be in a position to submit documentary proof of his salary is an unreasonable expectation. According to the appellant's testimony he was working as a 'Mistry' and was earning about Rs. 60-65 per day. Taking his daily wage to be Rs. 60/-, his monthly income comes to be Rs. 1,800/-. Since the person has lost the use of his right arm, an arm used more often than the left arm, the loss of income should be calculated at 75% of the income. Although the accident is of 1987 and the Second Schedule did not come in the Statute till 1994, but as the impugned award was passed in the year 1995, the learned Tribunal should have used the Schedule as a guideline. According to the Second Schedule attached with the Act, a multiplier of 18 should

have been applied by the learned Tribunal. Hence the appellant would have suffered a loss of Rs. 1350X12x18 = 2,91,600.

Hon'ble Supreme Court in the case of R.D. Hattangadi (supra) had held as under :-

> "Broadly speaking, while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial; (iii) other material loss. So far as non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering already sufered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters, i.e., on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."

Thus, the learned Tribunal should have kept the parameters laid down by Hon'ble Supreme Court while calculating the non-pecuniary loss. Surprisingly,the learned Tribunal has not given

any compensation for the medical expenses, or for the nutritional food, or for the pain and agony suffered by the appellant, or for the damages of loss of expectation, for the inconvenience, hardship, discomfort, disappointment, frustration and mental agony he has in life. Considering the fact that the appellant had to undergo two operations, one for the insertion of the plate and the other for grafting of bone, the appellant would be entitled to Rs. 30,000/- for the medical expenses suffered by him.

The loss of right arm is a devastating loss as it incapacitates a person and makes him physically and mentally dependent on others. The pain and agony suffered by the person has to be appreciated by the Tribunals. The disability of a major limb leads to a frustration for the rest of the one's life. Therefore, the pain and agony should have been compensated by the learned Tribunal. This Court deems it proper to grant a compensation of Rs. 40,000/- in the category of pain and agony, discomfort, disappointment, frustration and hardship and inconvenience.

In the result, the appellant is entitled to the compensation as follows:-

(1) Rs. 2,91,600/- under the category of loss of income.

(2) Rs. 30,000/- for medical expenses and nutritional food.

(3) Rs. 40,000/- for hardship, pain and agony, discomfort, disappointment, frustration, hardship and inconvenience.

Therefore, the appellant is entitled to receive the enhanced amount of Rs. 3,61,600/-. Although the Tribunal had awarded interest @ 12% per annum from the date of accident i.e. from 18.11.87., this Court is conscious of the fact that in the year 1995 when this appeal was filed the interest rate was 12% per annum, but presently it is 6% per annum. Thus, by way of via media, this Court directs that the interest @ 9% per annum shall be paid on the enhanced amount from the date of filing of this appeal i.e. from 7.8.95 till the date of realisation. Hence this appeal is allowed as indicated above.

(R.S. CHAUHAN) J.

MRG.